

EXHIBIT 3

PUBLIC VERSION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)

ANTITRUST LITIGATION) NO. 11-CV-2509-LHK

VIDEOTAPED DEPOSITION OF MARK FICHTNER

San Francisco, California

Monday, October 15, 2012

Volume I

Reported by:

ASHLEY SOEVYN

CSR No. 12019

Job No. 1541278

PAGES 1 = 233

1	testimony today?	09:20:38
2	A. No, sir.	09:20:39
3	Q. Okay. If I ask you a question that you	09:20:41
4	don't understand, please let me know. I'm not	09:20:42
5	trying to trick you. I'm not trying to confuse you.	09:20:45
6	If there is anything you don't understand, let me	09:20:49
7	know, and I'll try to do better. Fair enough?	09:20:52
8	A. Yes, sir.	09:20:54
9	Q. Okay. Now, you are currently employed at	09:20:55
10	Marvell; is that right?	09:21:00
11	A. Yes, sir.	09:21:01
12	Q. Is that how you pronounce it? Marvell?	09:21:02
13	A. Yes, sir.	09:21:03
14	Q. What does Marvell do?	09:21:04
15	A. Marvell is a fabless semiconductor company.	09:21:05
16	Q. And you are a software engineer; is that	09:21:07
17	right?	09:21:10
18	A. Yes, sir.	09:21:10
19	Q. Is there any more specific description that	09:21:11
20	you would use for what you do?	09:21:13
21	A. I write -- in this particular job, I write	09:21:17
22	automation software. Generally, software that	09:21:21
23	automates business processes, may automate	09:21:24
24	engineering processes. In general, Windows	09:21:27
25	software. I have done other software as well.	09:21:29

1 absolutely at the point -- at the time that I came 09:25:14
2 in it was a very new technology and was a very 09:25:16
3 integral technology to software development today. 09:25:18
4 Q. Is it fair to say or not that the type of 09:25:23
5 software engineering that you do is functionally 09:25:27
6 different than, let's say, being a web developer? 09:25:31
7 A. It is not fair to say that. 09:25:37
8 Q. Okay. 09:25:41
9 A. Microsoft has been working to bring the two 09:25:41
10 technologies together. And within a year of doing 09:25:45
11 the development, either for a Windows application or 09:25:47
12 a Windows website would be exactly the same. 09:25:49
13 In terms of basic software, the 09:25:51
14 applications have the same constructs, 09:25:54
15 object-oriented constructs. The only difference is 09:25:57
16 the platform that you're viewing it on. On the 09:26:01
17 website it's generic, you have to assume that you're 09:26:02
18 viewing different windows -- or you're on different 09:26:09
19 platforms and that sort of thing. 09:26:10
20 On the Windows platform it is more 09:26:13
21 specific. You know you're running on Windows. But 09:26:14
22 otherwise, the skills are exactly the same. 09:26:17
23 Q. Then should I take from that that you would 09:26:22
24 be qualified to be a web developer? 09:26:24
25 A. I have developed websites for Intel, mainly 09:26:28

1 developed? 09:27:47

2 A. I want to answer the question this way. 09:27:56

3 When professional companies interview candidates for 09:27:59

4 any software area, often they are more interested in 09:28:03

5 folks that are great problem solvers. And the 09:28:06

6 series of questions that they ask are not generally 09:28:09

7 whether you're proficient at a specific language or 09:28:12

8 a specific application. 09:28:16

9 They are more concerned with if you have 09:28:16

10 the ability to, number one, find the information 09:28:18

11 that you need, and if you have the ability to solve 09:28:20

12 tricky algorithms and come up with unique solutions. 09:28:23

13 In interviews that I've had with Microsoft 09:28:27

14 and Intel, the interviews were often focused in that 09:28:29

15 particular area than rather, you know, "Do you 09:28:32

16 understand our particular web technology," or that 09:28:34

17 sort of thing. 09:28:36

18 So in terms of can I get a great software 09:28:37

19 job? Yes. I can pretty much get in anywhere. 09:28:41

20 Would I directly apply for a web application job? 09:28:44

21 More than likely not. 09:28:49

22 Q. When you say that you could probably get a 09:28:50

23 great software engineering job anywhere, can you 09:28:54

24 expand on that a little bit? 09:28:57

25 MS. SHAVER: Objection, vague. 09:28:59

1	Any piece of silicon that goes out has a	10:09:12
2	piece of software as well. **. And any kind of	10:09:14
3	personal device that runs on a Windows machine, I	10:09:18
4	can write software for in order to enhance the user	10:09:21
5	experience.	10:09:25
6	Q. Okay. That's helpful, thanks. Turn back	10:09:26
7	to Exhibit 19, if you would, on page 7 -- sorry,	10:09:32
8	page 9.	10:09:44
9	If you look at page 9 at lines 17 to 18, it	10:09:49
10	says there that you've used co-workers, professional	10:09:56
11	contacts, and Internet resources such as Monster.com	10:10:00
12	to get information about jobs or compensation in the	10:10:05
13	market; is that right?	10:10:07
14	A. Yes.	10:10:10
15	Q. Which of those sources did you use for	10:10:10
16	information about jobs and which did you use for	10:10:13
17	information about compensation?	10:10:15
18	A. So certainly Monster.com occasionally will	10:10:27
19	publish -- they obviously publish jobs, and	10:10:31
20	occasionally they do publish wages or wage range, so	10:10:36
21	they were both -- co-workers, obviously the jobs	10:10:40
22	that I got were from people that I had worked with	10:10:43
23	in the past. So I obviously got both from them.	10:10:46
24	Professional contacts, most of my professional	10:10:51
25	contacts were former co-workers, so kind of the same	10:10:59

1	answer for that.	10:11:02
2	Q. Both those jobs and compensation would	10:11:04
3	apply there as well?	10:11:07
4	A. Yes.	10:11:08
5	Q. Okay. And you mentioned before that there	10:11:09
6	was a -- I think you said a large group of folks at	10:11:12
7	Intel that you could talk to about different jobs	10:11:15
8	that were available in the companies, right?	10:11:19
9	A. Yes.	10:11:21
10	Q. And would compensation that was available	10:11:22
11	at those different jobs also be part of that	10:11:23
12	discussion?	10:11:26
13	A. Intel has a policy to not discuss wages	10:11:27
14	while within Intel. And so in general we -- while	10:11:32
15	in Intel, we generally didn't discuss very often	10:11:35
16	wages -- outside of a conversation I had with a	10:11:43
17	manager where he/she would show you grade ranges and	10:11:45
18	that sort of thing. So it was not a discussion that	10:11:47
19	I often had with folks about what they were being	10:11:52
20	paid.	10:11:54
21	Q. Would you occasionally ever?	10:11:55
22	A. Not specifically for cash ranges. I think	10:11:58
23	the only kind of conversations that I had were if	10:12:03
24	somebody got promoted or that sort of thing. I was	10:12:08
25	curious. Especially if it was a former employee of	10:12:11

1 mine. And again, I was a manager for a particular 10:12:15
2 period of time up at Intel. I pretty much had 10:12:17
3 complete knowledge of what I made as well as what 10:12:20
4 people underneath me made as well as what the ranges 10:12:23
5 were. 10:12:27

6 Q. And what about -- did you have any 10:12:27
7 knowledge that came with being a manager of what 10:12:28
8 other managers or your peers were making? 10:12:31

9 A. In general, no. Not unless they ended up 10:12:37
10 working for me, which might have happened. 10:12:40

11 Q. Can you describe a little bit more the 10:12:46
12 policy that you say Intel had? I want to make sure 10:12:47
13 I understand that -- not to discuss each other's 10:12:50
14 wages at Intel? Is that the idea? 10:12:53

15 A. Not to discuss -- yes -- each other's 10:12:55
16 wages, or the grade level or -- they had a 10:12:58
17 different -- I don't necessarily remember a paper 10:13:02
18 specifically stating it, but I do remember in our 10:13:05
19 training sessions when we took -- information, like 10:13:08
20 what kind of information was confidential and that 10:13:11
21 sort of thing. 10:13:14

22 Mainly the focus was the company was trying 10:13:15
23 to make sure that Intel did not make mistakes of, 10:13:18
24 you know, since they were in the service business 10:13:24
25 for little while, leaking out information, that sort 10:13:26

1 A. In terms of this question, I no longer know 11:24:09
2 what you mean by the question. So if you would 11:24:13
3 define it, then I can give you a more accurate 11:24:15
4 answer. In terms of that question, a lot. A lot of 11:24:18
5 the e-mails I got through Monster are for contract 11:24:24
6 positions. I've never on Monster indicated that I 11:24:29
7 was interested in a contract position. So yes, a 11:24:33
8 lot of the e-mails seem to be spam of nature. 11:24:36

9 Q. So they are spam as opposed to being 11:24:40
10 serious because you were not interested in the 11:24:43
11 positions they were offering? 11:24:44

12 A. They are spam because they don't consider 11:24:46
13 the details of which you list, for what you're 11:24:49
14 interested in. 11:24:53

15 Q. Right. So whether it's serious or not 11:24:57
16 depends on what you're interested in -- in part? 11:25:00

17 A. Or the interest that you list on the site. 11:25:03
18 Again, my definition, not yours. As you indicated, 11:25:11
19 my definition is vague. 11:25:23

20 Q. What serious telephone cold calls have you 11:25:27
21 received? 11:25:35

22 A. As indicated on the sheet, I haven't 11:25:36
23 received a phone call from an employer first. 11:25:40

24 Q. Okay. So I just want to make sure I've got 11:25:55
25 it. So you've never received what you consider to 11:25:55

1	MS. SHAVER: Objection, assumes facts not	12:22:52
2	in evidence.	12:22:53
3	THE WITNESS: I didn't calculate.	12:22:55
4	BY MR. HINMAN:	12:22:57
5	Q. Well, you said -- didn't you tell me	12:22:57
6	earlier that that was part of your decision to go to	12:22:59
7	the Lab?	12:23:01
8	A. Yes, but I didn't do a financial	12:23:01
9	calculation.	12:23:04
10	Q. You put no value on that whatsoever?	12:23:04
11	MS. SHAVER: Objection, mischaracterizes	12:23:06
12	testimony.	12:23:08
13	THE WITNESS: I placed value on it. I	12:23:08
14	didn't do a financial or a monetary calculation of	12:23:11
15	what that would be worth.	12:23:14
16	BY MR. HINMAN:	12:23:15
17	Q. So there was greater than zero, but you	12:23:15
18	didn't know or think about how much greater than	12:23:19
19	zero; is that right?	12:23:22
20	A. I didn't do a numeric calculation.	12:23:23
21	Q. Okay. So when you left Marvell, is it	12:23:31
22	right to say -- well, do you know how much you were	12:23:34
23	making all in when you left Marvell?	12:23:37
24	MS. SHAVER: Objection, vague.	12:23:44
25	THE WITNESS: Are you referring to salary	12:23:46

1 and there. 12:32:51

2 Q. Have you ever applied for a job in the Bay 12:32:52

3 Area? 12:32:55

4 A. I believe originally when I was working 12:32:56

5 for -- when I was in college, I was interested in 12:33:04

6 actually working in the Bay Area. The recruiter 12:33:06

7 talked me into moving into Arizona, but my return 12:33:09

8 was moving ** -- the Santa Clara area. 12:33:14

9 Q. So that was in '93 at the beginning of your 12:33:18

10 career? 12:33:23

11 A. Yes. 12:33:24

12 Q. Did you have any particular companies in 12:33:24

13 mind at that time in the Bay Area that you might 12:33:26

14 like to work for? 12:33:29

15 A. Well, Intel at that time. I had 12:33:34

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 being a lot of opportunity. 12:33:49

19 Q. A lot fewer choices back then than there 12:33:51

20 were in the 2000s? 12:33:54

21 A. Yes. 12:33:55

22 Q. Okay. Now, in May of '08, you returned to 12:33:56

23 Arizona from Utah, right? 12:33:58

24 A. Yes. 12:34:00

25 Q. And you went back to work for Intel; is 12:34:01

1 that right? 12:34:03

2 A. Yes, sir. 12:34:03

3 Q. And the reason that you moved back is 12:34:04

4 because you had a house in Arizona and you had not 12:34:06

5 been able to sell it; is that right? 12:34:13

6 A. Yes. 12:34:15

7 Q. So is it fair to say at that point you were 12:34:16

8 pretty much limited to working in or around Phoenix, 12:34:18

9 Scottsdale area? 12:34:21

10 A. The primary reason that we had to get a 12:34:28

11 [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED]

13 of what job, it obviously was more convenient to 12:34:39

14 move back to Phoenix. 12:34:42

15 I don't recall how large of an area I was 12:34:45

16 looking at. I think at that point, it was more 12:34:49

17 where could I get contacts and it was more of an 12:34:52

18 urgent search than it was, I have all the time in 12:34:54

19 the world to find something. 12:34:57

20 Q. But if you hadn't moved back into your 12:34:59

21 house in the Phoenix area, I take it you would have 12:35:01

22 had to find another job in one of the places with 12:35:04

23 the client that you wanted that would have paid 12:35:07

24 enough to support two houses; is that fair? 12:35:09

25 A. Yes. 12:35:16

1 go up one or down one. It could not have extended 13:54:23
2 to what they wanted to hire me as. So they had to 13:54:27
3 shut down one job and open up a new one. 13:54:29
4 Q. At what point in that process of getting a 13:54:34
5 job in 2008 did you discuss compensation? Was that 13:54:35
6 on the one phone call that you had with Rana? 13:54:39
7 A. Probably an arranged discussion, but the 13:54:52
8 actual real number didn't come until the actual 13:54:54
9 offer. 13:55:05
10 Q. And so how and when did the offer come 13:55:06
11 after you had the conversation with Rana? 13:55:11
12 A. After I applied for the job it then went 13:55:15
13 through normal processes at Intel, and they had to 13:55:17
14 fill out paperwork, and it got approval, and 13:55:21
15 eventually an HR person had made a phone call to me. 13:55:23
16 And I accepted at that point. 13:55:29
17 Q. Did you negotiate the compensation? 13:55:34
18 A. No. 13:55:37
19 Q. How come? 13:55:40
20 A. Probably because it was somewhat of an 13:55:41
21 urgent -- an urgent move. 13:55:51
22 Q. Well, if you felt the compensation was 13:55:53
23 below market, would you have mentioned that? 13:55:55
24 A. The offer value was fair. The grade level 13:56:00
25 was not to my liking. 13:56:06

3 MS. SHAVER: Objection, calls for 15:25:26
4 speculation. 15:25:28

5 THE WITNESS: I don't know. 15:25:30

6 BY MR. HINMAN: 15:25:31

7

8 MS. SHAVER: Same objection. 15:25:35

9 THE WITNESS: I don't know. 15:25:36

10 BY MR. HINMAN: 15:25:38

11 Q. Well, those were alternative choices that 15:25:38
12 you had, right? 15:25:40

13 A. I don't agree with the premise. 15:25:53

14 Q. You told me earlier today that you could 15:25:54
15 work at any company that had software, right? Yes 15:25:56
16 or no, you told me that? 15:26:11

17 A. I can contribute to any company that 15:26:13
18 produces software, right. 15:26:14

19 Q. And so at some level, any company that 15:26:16
20 produces software is in competition for, not you 15:26:22
21 personally, but employees like you, right? 15:26:26

22 MS. SHAVER: Object to form. 15:26:31

23 THE WITNESS: Again, I am not agreeing with 15:26:43
24 your word "compete." 15:26:45

25 BY MR. HINMAN: 15:27:03

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 22nd day of October, 2012.

24


ASHLEY SOEVYN, CSR 12019

25

Page 233